

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charis Jones	Team: Squad #3	CCRB Case #: 202004351	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/26/2020 1:58 AM	Location of Incident: Rear of § 87(2)(b)	Precinct: 73	18 Mo. SOL 11/26/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sat, 05/30/2020 2:00 PM	CV Reported At: IAB	How CV Reported: E-mail	Date/Time Received at CCRB Wed, 06/17/2020 11:10 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM David Damico	16358	957509	073 PCT
2. An officer			
3. Officers			
4. PO James Fowler	03099	967512	073 PCT
5. PO James Hamilton	12176	954911	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO William Russ	02660	964746	073 PCT
2. PO Michael Evans Ibasan	13189	966113	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used physical force against individuals.	
B. An officer	Force: An officer used physical force against § 87(2)(b)	
C. Officers	Force: Officers used physical force against § 87(2)(b)	
D. POM David Damico	Force: Police Officer David Damico used physical force against § 87(2)(b)	
E. POM David Damico	Force: An officer used physical force against § 87(2)(b)	
F. Officers	Force: Officers used physical force against § 87(2)(b)	
G. Officers	Force: Officers used physical force against § 87(2)(b)	
H. PO James Fowler	Discourtesy: Police Officer James Fowler spoke discourteously to § 87(2)(b)	
I. PO James Hamilton	Discourtesy: Police Officer James Hamilton spoke discourteously to § 87(2)(b)	
J. POM David Damico	Off. Language: Police Officer David Damico made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
K. POM David Damico	Off. Language: Police Officer David Damico made remarks to § 87(2)(b) based upon race.	
L. POM David Damico	Discourtesy: Police Officer David Damico spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
M.POM David Damico	Discourtesy: Police Officer David Damico spoke discourteously to § 87(2)(b)	

Case Summary

On May 30, 2020, § 87(2)(b) called IAB and filed this complaint on behalf of herself and her cousin, § 87(2)(b) generating original log # 20-13758. The CCRB received the log on June 17, 2020. On September 1, 2020, this case was closed-pending litigation at the request of § 87(2)(b) criminal attorney, § 87(2)(b). On December 16, 2021, § 87(2)(b) complaint was reopened at her request after her criminal case associated with this incident was concluded.

On May 26, 2020, at approximately 1:58 a.m., Police Officer David Damico, Police Officer William Russ, Police Officer James Hamilton, Police Officer James Fowler, Police Officer Ibasan, Police Officer Selena Lopez, and Police Officer Javier Goin, all assigned to the 73rd Precinct, responded to a call for officers in need of assistance and shots being fired at § 87(2)(b). Upon arrival, officers pushed individuals (**Allegation A: Force, § 87(2)(g)**). An officer pushed § 87(2)(b) to the ground (**Allegation B: Force, § 87(2)(g)**). While on the ground, officers punched, kicked, and kned § 87(2)(b) (**Allegation C: Force, § 87(2)(g)**).

PO Damico allegedly pushed § 87(2)(b) in the chest approximately six times (**Allegation D: Force, § 87(2)(g)**). PO Damico punched § 87(2)(b) in the face (**Allegation E: Force, § 87(2)(g)**). Officers allegedly threw § 87(2)(b) face-first against the hood of a parked car (**Allegation F: Force, § 87(2)(g)**). During this time, an officer pulled § 87(2)(b) hair from behind (**Allegation G: Force, § 87(2)(g)**). PO Fowler said to § 87(2)(b) “You talk too fucking much,” (**Allegation H: Discourtesy, § 87(2)(g)**).

While escorting § 87(2)(b) to a police vehicle, PO Hamilton said to her, “You can call him yourself down at the fucking precinct” (**Allegation I: Discourtesy, § 87(2)(g)**). While transporting § 87(2)(b) to the 73rd Precinct stationhouse, PO Damico allegedly said, “So what, you fat (and/or) black bitch” (**Allegations J and K: Offensive Language, § 87(2)(g)**; **Allegations L and M: Discourtesy, § 87(2)(g)**).

§ 87(2)(b) was arrested for § 87(2)(b) (Board Review 01). § 87(2)(b) was not arrested nor was he issued any summonses as a result of this incident.

The investigation obtained the body-worn camera (BWC) footage from PO Damico, PO Russ, PO Fowler, PO Ibasan, PO Lopez, and PO Goin (Board Review 02). PO Russ, and PO Ibasan’s BWC footage best captured portions of this incident, respectively (Board Review 02).

IAB log # 20-13758 was referred to Patrol Borough Brooklyn North (PBBN) for further investigation and it was assigned to Sergeant Melissa Charles.

Allegation (A) Force: Officers used physical force against individuals.

Allegation (B) Force: An officer used physical force against § 87(2)(b)

Allegation (C) Force: Officers used physical force against § 87(2)(b)

Allegation (D) Force: Officers used physical force against § 87(2)(b)

Allegation (E) Force: Police Officer David Damico used physical force against § 87(2)(b)

Allegation (F) Force: An officer used physical force against § 87(2)(b)

Allegation (G) Force: Officers used physical force against § 87(2)(b)

Allegation (H) Force: An officer used physical force against § 87(2)(b)

Allegation (I) Discourtesy: Police Officer JAMES FOWLER spoke discourteously to § 87(2)(b)

Allegation I was captured on BWC footage and not alleged by § 87(2)(b) or § 87(2)(b)

In his interview to the CCRB, § 87(2)(b) (Board Review 03) testified that he arrived at a barbeque that was taking place in the rear parking lot of § 87(2)(b) at 5:00 p.m. on May 25, 2020. § 87(2)(b) could not approximate how many people were at the location, however, he knew that at least 30 people were present. People were playing music and cooking food. Alcohol was present but § 87(2)(b) denied drinking at any point. § 87(2)(b) is a § 87(2)(b)-old black male who stands 5'11 tall, weighs 230 pounds, has black hair and brown eyes, and was wearing a jean jacket and denim pants on the night of the incident. At approximately 1:58 a.m. on May 26, 2020, at the same location, § 87(2)(b) was in the front passenger seat of his friend's vehicle listening to music when he heard a loud commotion on the other side of the parking lot, approximately 50 feet away. § 87(2)(b) did not know what transpired but believed a fight might have broken out. § 87(2)(b) exited the vehicle and walked towards the crowd to see what had happened. Simultaneously, more than 20 uniformed and plainclothes officers entered the parking lot from behind § 87(2)(b) and started telling everyone to leave. Some of the people refused to leave and told the officers that they lived at the location. § 87(2)(b) observed officers push people to make them leave. § 87(2)(b) could not provide physical descriptions of these officers. § 87(2)(b) turned his back to the officers and attempted to follow behind his aunt to leave the location. As he walked, § 87(2)(b) felt two hands push the middle of his back from behind. § 87(2)(b) did not see who pushed him, however, he knew it was an officer because prior to being pushed he heard officers yelling, "Get back." § 87(2)(b) could not provide a physical description of the officer that pushed him from behind. § 87(2)(b) fell to the ground face first. While § 87(2)(b) was on the ground, approximately 10 officers hit him on the front of his face, the side of his face, and the top of his head. At one point, § 87(2)(b) was "pinned to the ground" while an officer had their knee on § 87(2)(b)'s lower back. § 87(2)(b) did not fight back nor did he make any other physical movements. § 87(2)(b) was unable to provide physical descriptions of any of the officers who used force against him because it happened "so fast." An officer, described as a male with brown skin who had an average build and was in uniform, eventually handcuffed § 87(2)(b). This officer did not use physical force against § 87(2)(b) at any point. The officers attempted to stand § 87(2)(b) up. § 87(2)(b) requested to stay on the ground and asked if he could go to the hospital. § 87(2)(b) stayed on the ground until an ambulance arrived approximately 20 minutes later. While waiting for the ambulance, § 87(2)(b) told the officers that they beat him up and that he needed medical attention. The officers ignored § 87(2)(b). § 87(2)(b) was eventually transferred onto a stretcher and wheeled to an ambulance. An officer removed the handcuffs from § 87(2)(b) before he got into the ambulance. § 87(2)(b) could not provide a physical description of this officer. § 87(2)(b) was never told why he was initially handcuffed or why the handcuffs were eventually removed. § 87(2)(b) was transported to § 87(2)(b) in Brooklyn where he saw § 87(2)(b) who had sustained a "busted lip." § 87(2)(b) informed § 87(2)(b) that she had been arrested because she attempted to help him but the officers ended up "pushing and fighting" her. § 87(2)(b) did not see what happened between § 87(2)(b) and the police. § 87(2)(b) sustained swelling and a laceration to his head and was released from the hospital approximately two hours after his admission.

In her CCRB interview, § 87(2)(b) (Board Review 04) testified that she lived at the incident location and arrived at the barbeque a few hours after it had initially begun. Upon arrival, § 87(2)(b) observed that at least 70 people were present all of whom were either § 87(2)(b) friends, neighbors, tenants, or family. Food was being cooked, music was playing, and alcoholic beverages

were present. § 87(2)(b) consumed one alcoholic beverage while at the location but was not intoxicated at any point. At approximately 1:58 a.m. on May 26, 2020, gun shots were fired. § 87(2)(b) could not recall how many shots were fired or where the shots came from; she could not tell if someone at the party had fired the shots or if it came from somewhere else within the vicinity. The people at the barbeque dispersed immediately and § 87(2)(b) ran into the basement of her building where she remained for approximately three minutes, until she went back into the parking lot to look for her sister. Upon exiting, § 87(2)(b) observed approximately 20 officers “beating” § 87(2)(b). § 87(2)(b) was “a couple feet” away from the officers and § 87(2)(b) § 87(2)(b) was on the ground and in handcuffs as officers punched, kicked, and pulled § 87(2)(b). § 87(2)(b) § 87(2)(b) could not see where on § 87(2)(b)’s body the officers were making physical contact because the officer’s bodies obscured her view. § 87(2)(b) could not recall if the officers or § 87(2)(b) made any statements at that time. § 87(2)(b) could not recall the physical appearance of any of the officers who used force against § 87(2)(b). During that time, § 87(2)(b) stood with approximately 20 other people who watched the officers use physical force against § 87(2)(b). Every time the individuals attempted to get closer to § 87(2)(b) officers would push them back. § 87(2)(b) could not provide physical descriptions of the officers she observed push the individuals. As § 87(2)(b) attempted to move forward, PO Damico pushed § 87(2)(b) on her upper chest area near her shoulder and told her to move back. As a result of PO Damico’s push, one of § 87(2)(b) shoes fell off. § 87(2)(b) told PO Damico that her shoe came off and told him to not touch her. At that point, § 87(2)(b) was attempting to reach for her shoe. PO Damico pushed § 87(2)(b) on her upper chest/shoulder area approximately six times in total. § 87(2)(b) § 87(2)(b) heard PO Damico tell the other officers on scene that she had punched him in the face. § 87(2)(b) § 87(2)(b) could not recall if she punched PO Damico in the face but stated that she may have accidentally punched him as a reflex to PO Damico pushing her. § 87(2)(b) could not recall if PO Damico made any additional statements. Officers grabbed § 87(2)(b) arms on either side. § 87(2)(b) § 87(2)(b) could not provide a physical description of these officers because they were behind her for this portion of the incident. Simultaneously, PO Damico punched § 87(2)(b) on the side of her face with a closed fist. After PO Damico punched § 87(2)(b) officers threw § 87(2)(b) face-first against the hood of an unmarked black sedan that was parked next to them. § 87(2)(b) could not provide physical descriptions of these officers because they were behind her. § 87(2)(b) was not making any physical movements while lying face first on the hood of the vehicle. § 87(2)(b) felt her hair being pulled from behind. § 87(2)(b) could not recall how many hands she felt pulling her hair nor did she see which officers pulled her hair since she was facing forward. As the officers pulled § 87(2)(b) back, they pushed her shoulder and head forwards so that her torso was flat on the hood. An officer pushed, pulled, and twisted both of her arms while ordering § 87(2)(b) to stop resisting arrest. § 87(2)(b) was eventually handcuffed, lifted from the vehicle, and escorted to a marked police vehicle that was parked in front of her building. § 87(2)(b) sustained a contusion to her lip.

PO Damico (Board Review) testified that he and PO Russ were on routine patrol within the confines of the 73rd Precinct when they received a radio transmission regarding multiple shots fired and two people being shot at the incident location. The radio transmission was placed by officers already at the incident location; however, PO Damico could not recall who specifically made the call. PO Damico and PO Russ arrived at the location within a minute of receiving the call and entered through the apartment’s courtyard to access the parking lot. Upon entering, PO Damico, observed people fleeing and running in different directions. Approximately 100-150 civilians were present at the location, some of whom were drinking, smoking, yelling, and trying to get into cars to leave. PO Damico believed that approximately 20 officers were already on scene when he arrived but it was too dark for him to know for certain. PO Damico believed approximately 14 officers from his “platoon” responded to the location, including PO Fowler and PO Hamilton. By the time additional back up responded, approximately 60 officers in total were present. Officers from different commands, whom PO Damico could not identify, also responded. Multiple supervisors

were present; however, PO Damico could not identify them. PO Damico was not given any instructions on what to do by any of the supervisors on scene. PO Damico started to clear the crowd out by yelling at people to leave. PO Damico did not push or shove any individuals while on scene nor did he see any other officer do so. A bottle of Patron was thrown at PO Damico and approximately nine other officers as they walked towards the rear of the parking lot. PO Damico could not identify any of these officers and he did not observe who threw the bottle. One of the officers caught the bottle. Some of the officers moved into arrest the individual who threw the bottle. Simultaneously, PO Damico went around a parked car to where the arresting officers were located and blocked the crowd that was circling around them. PO Damico did not observe what if any physical actions were taken by the officers attempting to arrest this individual because his back was to them. PO Damico was provided with a physical description of § 87(2)(b) as well as a description of the portion of the incident involving him. Hearing this did not refresh PO Damico's memory of interacting with § 87(2)(b) at any point. PO Damico denied committing any of the allegations against § 87(2)(b) and did not observe any other officer do so. PO Damico observed an officer, whom he could not identify, attempting to hold § 87(2)(b) and another female back as they attempted to reach the individual that was being arrested. PO Damico approached this officer and stood next to him. PO Damico extended both of his arms in front of his body with his palms exposed and said, "Get back, get back." § 87(2)(b) and the other female pushed up against PO Damico's hands. PO Damico could not recall if § 87(2)(b) or the other female made any statements at that time. In response, PO Damico continued to extend his arms to create a zone of safety between him and § 87(2)(b). PO Damico did not push § 87(2)(b) in the chest at any point nor did he observe any other officer do so. This portion of the incident lasted approximately 30 seconds. § 87(2)(b) then punched PO Damico in the face with a closed fist near his mouth and nose area. PO Damico struck § 87(2)(b) once in the face with a closed fist in response, although he could not recall specifically where on her face he made contact. PO Damico stated that he punched § 87(2)(b) in the face because she had just struck him and he was protecting himself. Officers did not hold § 87(2)(b) back while PO Damico punched § 87(2)(b). After PO Damico struck § 87(2)(b) either a civilian or officer pushed him backwards. During that time, PO Damico's BWC fell off his person. Approximately four or five officers attempted to place § 87(2)(b) under arrest. At some point, PO Damico assisted in restraining § 87(2)(b) by pulling one of her arms behind her back. PO Damico did not handcuff § 87(2)(b) and could not recall which officer did so. PO Damico observed § 87(2)(b) being put up against a vehicle face-first by the officers but could not identify them. PO Damico clarified that § 87(2)(b) was not a small person and that sometimes the easiest way to handcuff a larger individual is to have them up against an object as opposed to being on the ground. Officers attempted to secure § 87(2)(b) into handcuffs but she pulled her arms inward towards the front of her body to avoid being handcuffed. PO Damico could not recall which officers were involved in the handcuffing of § 87(2)(b). PO Damico did not pull § 87(2)(b) hair from behind nor did he observe any other officer do so. After § 87(2)(b) was secured, PO Hamilton and PO Russ escorted § 87(2)(b) out of the parking lot. An ambulance was called for § 87(2)(b) at the stationhouse. PO Damico could not recall if § 87(2)(b) was treated at the stationhouse or taken to the hospital. An ambulance was also called for PO Damico. PO Damico did not go to the hospital, and he did not have any further interaction with § 87(2)(b). The transcription of PO Damico's interview with IAB was consistent with the testimony he provided above (Board Review 28).

PO Russ' (Board Review 06) testimony was generally consistent with PO Damico's regarding their response to the location as well as the initial observations he made once at the parking lot. PO Russ began ordering people to back up and to leave the location. PO Russ did not push any individuals present nor did he observe any other officers do so. The crowd was angry that the police were there. PO Russ did not observe any officers physically engaged or fighting with any of the civilians present. PO Russ did not recall observing § 87(2)(b) on scene, despite being provided with a physical description of § 87(2)(b) and the incident he was involved with. PO Russ denied

committing any of the allegations against § 87(2)(b) and he did not observe any other officers do so. PO Russ did not see what happened between § 87(2)(b) and PO Damico because he was focused on the individuals in front of him a few feet away. PO Russ heard either PO Damico or another officer say that PO Damico had been punched in the face, which is what prompted PO Russ' involvement with § 87(2)(b). PO Russ did not see § 87(2)(b) punch PO Damico in the face, nor did he see PO Damico punch § 87(2)(b) in the face because he was focused on the individuals in front of him a few feet away. PO Russ did not know if PO Damico punched § 87(2)(b) in the face. PO Russ did not see what § 87(2)(b) was doing when he initially approached but he immediately grabbed her arms and put them behind her back. § 87(2)(b) refused to give the officers her arms. PO Russ could not recall which officers were involved in the handcuffing of § 87(2)(b) aside from PO Damico. PO Russ did not hold § 87(2)(b) back while PO Damico punched her in the face nor did he observe any other officer do so. PO Russ did not observe PO Damico push § 87(2)(b) in the chest nor did he observe any other officer do so. § 87(2)(b) may have been pushed against a vehicle while being put into handcuffs, but PO Russ could not recall for certain. PO Russ did not throw § 87(2)(b) against the hood of the vehicle nor did he recall seeing other officers do so. PO Russ did not pull § 87(2)(b) hair nor did he observe any other officer do so. PO Russ could not recall if he observed any injuries on § 87(2)(b) or if § 87(2)(b) complained of being in pain. After § 87(2)(b) was handcuffed, two officers escorted § 87(2)(b) to a police vehicle.

PO Hamilton's (Board Review 07) testimony was generally consistent with PO Damico's regarding the information he received about shots being fired at the location, his response to the location, and the initial observations he made on scene. Upon arrival, PO Hamilton's BWC fell off when he unbuckled his seat belt. Once PO Hamilton entered the parking lot, he began ordering individuals to leave. PO Hamilton did not push any individuals while on scene nor did he observe any other officer do so. PO Hamilton was provided with a physical description of § 87(2)(b) as well as the portion of the incident he was involved with. This did not refresh PO Hamilton's recollection of having any interaction with § 87(2)(b). PO Hamilton denied committing any of the allegations against § 87(2)(b) and he did not observe any other officers do so. PO Hamilton and PO Damico were telling an unidentified female and § 87(2)(b) to leave the location when he observed § 87(2)(b) punch PO Damico in the face with a closed fist. PO Hamilton did not observe PO Damico push § 87(2)(b) in the chest at any point nor did he observe PO Damico punch § 87(2)(b) in the face. PO Damico grabbed one of § 87(2)(b) arms, put it into a handcuff, and held it behind § 87(2)(b) back. PO Hamilton grabbed § 87(2)(b) free arm and held it behind her back while PO Damico applied the other handcuff. § 87(2)(b) tensed her arms and kicked her legs. PO Hamilton believed § 87(2)(b) was intoxicated because she was slurring her words but he could not recall what she said. PO Damico did not observe any injuries on § 87(2)(b) or PO Damico. PO Damico and PO Hamilton ordered § 87(2)(b) to stop resisting. PO Hamilton could not recall which officers assisted in restraining § 87(2)(b). At one point, § 87(2)(b) fell face first onto the hood of a vehicle. PO Hamilton did not push § 87(2)(b) onto the hood of the vehicle nor did he see any other officer do so. Other officers, whom PO Hamilton could not identify, assisted in holding § 87(2)(b) arms behind her back. § 87(2)(b) was eventually handcuffed. PO Hamilton did not pull § 87(2)(b) hair from behind nor did he observe any other officer do so. PO Hamilton and PO Ibasan escorted § 87(2)(b) out of the parking lot to a marked police vehicle.

PO Fowler's (Board Review 08) testimony was generally consistent with PO Damico's regarding the information he received about shots being fired at the location, his response to the location, and the initial observations he made on scene. Upon arrival, PO Fowler began ordering civilians to "get back" and to "move to the side." PO Fowler did not push any individuals on scene nor did he observe any other officer do so. PO Fowler was provided with a physical description of § 87(2)(b) as well as a description of the portion of the incident he was involved with. This did not refresh PO Fowler's recollection of the incident regarding § 87(2)(b). PO Fowler denied

committing any of the allegations against § 87(2)(b) and he did not observe any other officers do so. PO Fowler was approximately 10 feet away from § 87(2)(b) when he heard commotion coming from her direction. PO Fowler could not recall what § 87(2)(b) was shouting at the time but recalled that it was “noticeable.” PO Fowler observed approximately two or three officers struggling to place § 87(2)(b) into handcuffs on the hood of a parked car. At that point, § 87(2)(b) was lying face-first against the hood of the parked vehicle. PO Fowler did not observe how § 87(2)(b) came to be on the hood of the vehicle. § 87(2)(b) tensed her arms and attempted to hold them in front of her to avoid being handcuffed. PO Fowler could not recall if § 87(2)(b) was doing anything else physically at that time. PO Fowler could not recall which officers assisted in handcuffing § 87(2)(b). PO Fowler could not recall what physical actions the officers took in the process of handcuffing § 87(2)(b). PO Fowler approached and assisted the other officers in handcuffing § 87(2)(b) by holding one of her arms behind her back. PO Fowler ordered § 87(2)(b) to keep her hands behind her back and acknowledged saying to § 87(2)(b) “Shut up, you talk too fucking much,” while he was attempting to place her into handcuffs. PO Fowler made that statement because it was a very stressful situation and that it “just came out.” Once § 87(2)(b) hands were behind her back, an officer placed her wrists into the handcuffs and PO Fowler walked away. PO Fowler did not have any further interaction with § 87(2)(b).

PO Ibasan’s (Board Review 21) testimony was generally consistent with PO Damico’s regarding the information he received about shots being fired at the location, his response to the location, and the initial observations he made on scene. Once on scene, PO Ibasan extended his hands in front of his person, with his hands exposed, and ordered people to get back. PO Ibasan could not recall if he observed officers push civilians on the scene but denied pushing any civilians himself. PO Ibasan was provided with a physical description of § 87(2)(b) as well as a description of the portion of the portion of the incident he was involved with. This did not refresh PO Ibasan’s recollection of the incident. PO Ibasan denied committing any of the allegations against § 87(2)(b) and he did not observe any other officer do so. PO Ibasan did not participate in the initial handcuffing of § 87(2)(b) and denied committing any of the allegations against § 87(2)(b). PO Ibasan did not recall seeing any other officer commit any of the allegations against § 87(2)(b).

None of the BWC footage obtained by the investigation captured the portion of the incident involving § 87(2)(b) (Board Review 02). The footage from the entire incident is generally blurry and difficult to see since it was dark outside and there was no lighting at the incident location. None of the BWC footage shows officers pushing civilians at the location.

PO Russ’ BWC footage most clearly captured the portion of the incident involving § 87(2)(b) (Board Review 02). PO Russ’ BWC footage (file name ending in “01-42-06.AVI”), which is approximately 04:48 minutes in length, begins from his perspective as he runs on the sidewalk towards the incident location. The audio begins at 00:30 as PO Russ runs down an alleyway and into the parking lot. A large group of civilians are gathered further away from PO Russ. PO Russ proceeds to run toward the crowd. At 00:51, PO Russ approaches a grey sedan with the passenger door open and civilians inside. An officer can be heard saying, “Back up, back up.” At 01:00, PO Russ walks past the vehicle and stands in the parking lot. Over 20 civilians are captured standing around and officers (unclear how many) are walking about as well. People are shouting and talking to one another. All of the statements are inaudible given how many people are present and talking at the same time. At 01:38, a commotion erupts on the right side of the frame. Officers, including PO Russ, run to the right side of the frame. From 01:41 to 01:59, PO Russ’ camera is blurry. An officer can be heard telling civilians to back up. At 01:50, multiple officers are captured struggling with someone on the ground. The individual on the ground is not captured because the officers are on top of this person. It is unclear what specific actions the officers take in relation to this person since PO Russ walks by them. It is possible that this is the portion of the incident involving § 87(2)(b).

§ 87(2)(b) however, the footage does not show the civilian at any point. PO Russ walks around the front side of a car that is parked against a fence and approaches the crowd from the other side. At 02:40, PO Damico, PO Fowler, and PO Hamilton stand behind § 87(2)(b) who is face first on the hood of a vehicle and appear to hold § 87(2)(b) arms from behind. The specific physical actions taken by the officers and § 87(2)(b) are unclear during this time since it is dark outside, and PO Russ' camera is blurry. An officer says, "Get the cuffs," and another officer says, "Put the cuffs on her." § 87(2)(b) says, "Alright." At 02:52, § 87(2)(b) remains face-first on the hood of the vehicle and her mouth appears to be bleeding. § 87(2)(b) says, "My arm, let my arm go." PO Fowler, PO Damico, and PO Hamilton continue to stand behind § 87(2)(b) as they attempt to handcuff her. PO Fowler says to § 87(2)(b) "Shut up. You talk too fucking much, man." PO Russ walks away from § 87(2)(b) and the officers for approximately 30 seconds. At 03:41, PO Russ returns to where § 87(2)(b) and the officers were and looks for PO Damico's lost BWC. At 03:58, § 87(2)(b) is captured standing up right and in handcuffs against another vehicle, which is parked in front of the initial vehicle that § 87(2)(b) was face first on. § 87(2)(b) is then escorted out of the frame by PO Hamilton and PO Ibasan. At 04:31, § 87(2)(b) says, "Why yall being so aggressive? I will sue the shit out of yall." PO Russ walks behind § 87(2)(b) and PO Ibasan and PO Hamilton, who are on either side of her, as they escort her away from the officers. PO Russ's footage abruptly ends at 04:48.

§ 87(2)(b) provided the investigation with photographs he took at the hospital of the injuries he sustained as a result of the incident as well as a photograph of § 87(2)(b) (Board Review 11). The photographs of § 87(2)(b) showed redness and swelling to the left side of his face and two small abrasions above his right eyebrow. The photograph of § 87(2)(b) shows a bloody laceration on the left side of her mouth.

§ 87(2)(b) medical records from § 87(2)(b) (Board Review 12) note that she arrived at the hospital on May 26, 2020, at 2:56 p.m., § 87(2)(b) "chief complaints" upon arrival were, "facial injury (said to have been involved in fight with the police), hand injury, mouth injury, and back pain." § 87(2)(b) informed the doctor that she was "assaulted by police." No photographs were included with § 87(2)(b) medical records. § 87(2)(b) was not diagnosed with anything but was given a Toradol injection and Tylenol for the pain. § 87(2)(b) was discharged at § 87(2)(b).

Event materials revealed that at 1:38 a.m., approximately five 911 calls were placed regarding approximately five to seven-gun shots being fired at the incident location (Board Review 10). A Level 1 Mobilization and aviation unit were deployed over the city-wide special command transmission as a result.

The narrative section of § 87(2)(b) arrest report states, "§ 87(2)(a) 160.50" (Board Review 01). The narrative section of the complaint report (UF-61) was consistent with that of the arrest report. The Medical Treatment of Prisoner Report (MTPR), prepared by Police Officer Selena Lopez, who is assigned to the 73rd Precinct, noted that § 87(2)(b) sustained a contusion to the lip and was transported to § 87(2)(b) (Board Review 16).

TRI report # § 87(2)(b) (Board Review 09), prepared by PO Damico, notes the following type of force used against the reporting officer: foot strike, hand strike, pushing/shoving, and physical harassment. Under the "injury sustained by MOS section," "contusions" and "minor swelling" are reported. PO Damico acknowledged using a hand strike against § 87(2)(b) and noted that his reason was to "overcome resistance or aggression" and in "defense of self." § 87(2)(b) sustained an "injury/illness resulting from police action" and was seen by EMS. PO Damico sustained a "swollen lip."

During his interview, PO Damico was shown the TRI report he prepared (Board Review 05, 09). Under the “Force used against MOS” section, “foot strike, hand strike, pushing, shoving, and physical harassment” were marked. PO Damico stated that he did not recall § 87(2)(b) kicking him at any point and that it may have been an error. “Physical harassment” referred to when § 87(2)(b) pushed up against PO Damico when she tried to move past him.

PO Damico provided the investigation with two photographs he took on his department cellphone (Board Reviews 13, 14). The first photograph shows swelling and bruising to PO Damico’s lip. The second photograph showed a contusion to § 87(2)(b) mouth (Board Review).

The narrative section of TRI report # § 87(2)(b), prepared by Sergeant Daniel Crisan of the 73rd Precinct, states, “At T/P/O officer Damico tax # 957509 and officer Russ tax # 964746 responded to a multiple shots fires/request for additional units at the rear of § 87(2)(b). Officer Damico asked § 87(2)(b) to move out of the way when § 87(2)(b) did strike PO Damico with a closed fist in the face causing injury (contusion/substantial pain to lower lip). PO Damico used a hand strike to overcome resistance and gain complaint, causing a contusion to § 87(2)(b) lip. § 87(2)(b) was subsequently placed under arrest and charged with assault in the second degree, arrest # § 87(2)(b) in 73rd Precinct. § 87(2)(b) was removed to § 87(2)(b) treated and released. The undersigned did informally interview all parties involved, reviewed PO Damico and PO Russ BWC and did canvass for cameras with negative results. Officer Damico stated that § 87(2)(b) did strike him with closed fist in the face suddenly when she was asked to move out of the way causing injury to Officer Damico. Officer Russ, Officer Damico’s partner, reiterated the same sequence of events. § 87(2)(b) refused to make any statement. The hand strike used by officer Damico is in compliance with department guidelines. The minimum force to gain compliance was used by officer Damico. The undersigned recommends that no action be taken at this time and requests that this case be closed with no further action needed (Board Review 15).

No TRI was prepared for § 87(2)(b)

Sgt. Charles from PBBN investigated an allegation of physical force against PO Damico and came to her own dispositions. The physical force PO Damico used against § 87(2)(b) was exonerated with a note that “the s/o (subject officer) did punch the c/v in the face after she punched him while trying to obstruct the arrest of a male at the scene” (Board Review 17).

NYPD Patrol Guide Procedure 221-01 states that “force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise to protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. The following factors, among others, must be considered when determining whether the use of force is proper; the nature and severity of the crime/circumstances; actions taken by the subject; the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; the number of subjects in comparison to the number of officers; the size, age, and condition of the subject in comparison to the officers; the subject’s violent history (if known); and the presence of a hostile crowd or agitators (Board Review 18).

NYPD Patrol Guide Procedure 203-09 requires officers to be courteous and respectful (Board Review 19).

DAO-DCT Case Number 2017-17005 held that profane remarks, made during a stressful situation or while an officer is trying to get a chaotic situation under control are not misconduct (Board

Review 20).

§ 87(2)(g)

[REDACTED]

§ 87(2)(b) testified that he was pushed from behind by an officer, which caused him to face-first on the ground, and that while on the ground he was hit in his face, the side of his face, and the top of his head by approximately ten officers. The photographs of § 87(2)(b)'s face show redness and swelling to the left side of his face and two small abrasions above his right eyebrow. § 87(2)(b) testified that she observed officers "beating" § 87(2)(b) however, she could not see the specific types of physical force they were using against him. Both § 87(2)(b) and § 87(2)(b) were unable to provide physical descriptions of the officers. All the officers interviewed did not recall interacting with or observing § 87(2)(b) at any point, denied committing any of the allegations against § 87(2)(b) and did not see any other officers do so. In addition, none of the BWC footage showed § 87(2)(b)'s interaction with the officers. § 87(2)(g)

[REDACTED]

§ 87(2)(b) testified that PO Damico pushed her in the chest approximately six times. PO Damico testified that he extended his hands in front of him with his palms exposed to create space between himself and § 87(2)(b) because she was attempting to get back him and, as a result, § 87(2)(b) pushed herself up against PO Damico's hands. PO Damico denied pushing § 87(2)(b) at any point. PO Russ, PO Hamilton, and PO Fowler did not observe PO Damico push § 87(2)(b). § 87(2)(g)

[REDACTED]

§ 87(2)(b) testified that she may have accidentally punched PO Damico in the face as a reflex to him pushing her. § 87(2)(b) also testified that PO Damico punched her in the face. The footage obtained does not capture § 87(2)(b) and PO Damico punching each other in the face. § 87(2)(b)'s body obscured PO Damico's footage and PO Hamilton did not have his camera on his person. PO Damico testified that § 87(2)(b) punched him in the face with a closed fist and that in response, he punched her in the face, which was corroborated by PO Hamilton's testimony. On his own account, PO Damico punched § 87(2)(b) in the face because she had just punched him, and he needed to protect himself. § 87(2)(g)

[REDACTED]

§ 87(2)(g)

PO Russ' BWC footage captured § 87(2)(b) being handcuffed by PO Damico, PO Fowler, an PO Hamilton from behind while she was face first on the hood of a parked car. However, none of the BWC footage captured how § 87(2)(b) came to be face first on the hood of the parked vehicle. § 87(2)(b) testified that uniformed officers threw her against the vehicle, however, she could not provide physical descriptions of these officers. PO Damico testified that he observed § 87(2)(b) being placed on the hood of the vehicle, PO Hamilton stated that § 87(2)(b) fell onto the hood of the vehicle, and PO Fowler testified that § 87(2)(b) was already on the hood of the vehicle when he assisted in handcuffing her. There is no documentary evidence regarding § 87(2)(b) being on the hood of the vehicle at any point or how she came to be there. § 87(2)(g)

The BWC footage is inconclusive as to whether officers pulled § 87(2)(b) hair from behind while she was being handcuffed on the vehicle. Based on the BWC footage and civilian officer testimonies, the investigation determined that PO Damico, PO Hamilton, PO Russ and PO Fowler were behind § 87(2)(b) while she was face-first on the vehicle during the time she alleged her hair was pulled by an officer. § 87(2)(g)

It is undisputed that PO Fowler said to § 87(2)(b) "You talk too fucking much." PO Russ' BWC footage shows § 87(2)(b) bent over on the hood of the car saying, "My arm, let my arm go!" During this time PO Fowler, PO Damico, and PO Hamilton are behind § 87(2)(b) attempting to place her into handcuffs. § 87(2)(b) does not appear to be making any physical movements at the time PO Fowler made that statement. PO Fowler testified that he made that statement because handcuffing § 87(2)(b) was very stressful and that it "just came out." § 87(2)(g)

Allegation (I) Discourtesy: Police Officer JAMES HAMILTON spoke discourteously to

§ 87(2)(b)

Allegation (J) Offensive Language: Police Officer David Damico made remarks to

§ 87(2)(b) based upon the gender of § 87(2)(b)

Allegation (K) Offensive Language: Police Officer David Damico made remarks to

§ 87(2)(b) based upon race.

Allegation (L) Discourtesy: Police Officer David Damico spoke discourteously to

§ 87(2)(b)

Allegation (M) Discourtesy: Police Officer David Damico spoke discourteously to

§ 87(2)(b)

§ 87(2)(b)

Allegation I was captured on BWC footage and was not alleged by § 87(2)(b)

§ 87(2)(b) (Board Review 04) testified that PO Damico and another officer, described as white male who stood 5'7" tall and was in uniform, transported § 87(2)(b) to the 73rd Precinct stationhouse. PO Damico operated the vehicle and the other officer sat in the front passenger seat. § 87(2)(b) told PO Damico and the other officer that her uncle was a detective. PO Damico responded, "So what, fat (and/or) black bitch, you hit me." § 87(2)(b) and the officers arrived at the 73rd stationhouse approximately five minutes later.

PO Ibasan's BWC footage (file name ending in "43-02.AVI"), which is approximately 07:13 in length, captured this portion of the incident (Board Review 02). At 03:12, § 87(2)(b) is captured being escorted away from the crowd by PO Hamilton while handcuffed. At 03:38, PO Ibasan assists PO Hamilton in escorting § 87(2)(b) out of the parking lot by holding onto her left arm as she walks. § 87(2)(b) continues to repeat that she will sue the officers. Bystanders yell to § 87(2)(b) asking her what happened. § 87(2)(b) responds that she will "sue the shit out of them" (referring to the officers). At 04:29, PO Ibasan walks behind § 87(2)(b) as PO Hamilton holds onto her right arm and continues to escort her out of the parking lot. At 04:58, PO Ibasan, § 87(2)(b) and PO Hamilton exit the parking lot and begin walking on the sidewalk. At 05:54, § 87(2)(b) asks an unidentified male standing on the sidewalk to call her father. § 87(2)(b) tells him her father's number and he repeats it back to her. At 06:10, an officer says to § 87(2)(b) "You can call him yourself at the fucking precinct."

PO Damico's BWC footage also captured this portion of the incident (Board Review 02). At 04:08, PO Damico approaches PO Ibasan and PO Hamilton who are standing on either side of § 87(2)(b). At 04:30, PO Damico walks behind PO Ibasan and PO Hamilton as they escort § 87(2)(b) out of the parking lot. § 87(2)(b) repeatedly yells, "I am going to sue the shit out of yall." PO Damico's BWC is blurry and is angled sideways because he is holding his camera in his hand. At 05:54, § 87(2)(b) who is not captured, can be heard saying, "You jumped me." PO Damico says, "Oh yeah, we jumped you," in response. § 87(2)(b) says, "I am going to sue the shit out of yall so it don't matter. Watch." At 06:04, PO Damico says, "Oh yeah, yeah, yeah. Maybe you-maybe you can move out of the plaza." § 87(2)(b) responds, "Don't worry I come from money baby. I come from it. At 06:44, § 87(2)(b) who is not captured, can be heard providing a phone number to an unidentified male (also not captured). At 06:59, an officer, who is not PO Damico says, "You can call him yourself down at the fucking Precinct." At 07:15, PO Damico opens the door of a vehicle. § 87(2)(b) can be heard saying, "This is the first time I've been arrested." PO Damico responds, "Well, there's a first time for everything." As PO Damico opens the door of the vehicle, his footage ends abruptly.

There is no BWC footage of § 87(2)(b) transport to the 73rd Precinct stationhouse.

PO Damico (Board Review 05) testified that after § 87(2)(b) was handcuffed, PO Hamilton and PO Russ escorted § 87(2)(b) out of the parking lot. PO Damico picked up his BWC and followed behind PO Hamilton, PO Russ, and § 87(2)(b). PO Damico could not recall if § 87(2)(b) PO Hamilton or PO Russ made any statements while they walked to the police vehicle. PO Damico did not say, "You can call him yourself down at the fucking precinct," nor did he hear any other officer do so. Once § 87(2)(b) was in the police vehicle, she was transported back to the 73rd Precinct stationhouse. PO Damico could not recall who transported § 87(2)(b) back to the stationhouse. PO Damico did not say to § 87(2)(b) "So what you fat (and/or) black bitch," nor did he hear any other officer do so. The transcription of PO Damico's IAB interview regarding this allegation was

consistent with the testimony he provided above (Board Review 28).

PO Russ (Board Review 06) testified that he followed a few feet behind two officers as they escorted § 87(2)(b) to the police vehicle. PO Russ could not recall which officers brought § 87(2)(b) to the police vehicle. § 87(2)(b) was screaming out a phone number and said she was going to sue the officers. PO Russ did not say, “You can call him down at the fucking precinct” nor did he hear any other officer do so. § 87(2)(b) was eventually placed into the police vehicle. PO Russ could not recall if he and PO Damico or the other officers transported § 87(2)(b) to the 73rd stationhouse. PO Russ did not hear PO Damico, “So what you fat/black bitch” to § 87(2)(b) at any point.

PO Hamilton (Board Review 07) testified that he and PO Ibasan escorted § 87(2)(b) out of the parking lot to a marked police vehicle. As they walked to the vehicle, § 87(2)(b) yelled her phone number to an unidentified individual. PO Hamilton could not recall what the context of her providing her number was. PO Hamilton denied saying, “You can call him yourself down at the fucking precinct,” and he did not hear any other officer do so. PO Hamilton could not recall if he transported § 87(2)(b) back to the 73rd Precinct stationhouse. PO Hamilton did not hear PO Damico refer to § 87(2)(b) as a “fat” or “black bitch” at any point. PO Hamilton did not record any portion of this incident on his BWC because it fell off when he unbuckled his seat belt when he initially arrived at the location. During his interview, PO Hamilton was shown PO Ibasan’s BWC footage located in IA # 86 of the digital case file from 06:07 to 06:11. This footage captures an officer saying, “You can call him yourself down at the fucking Precinct.” After reviewing the footage, PO Hamilton denied making that statement. PO Hamilton could not identify the voice of the officer that made that statement.

PO Ibasan (Board Review 21) testified that he could not recall if any other officers, aside from himself and PO Hamilton, assisted in escorting § 87(2)(b) to the police vehicle. § 87(2)(b) appeared to be upset and was yelling at officers. PO Ibasan could not recall what § 87(2)(b) was yelling. PO Ibasan did not recall if § 87(2)(b) himself, or PO Hamilton made any statements while walking to the police vehicle. PO Ibasan did not recall § 87(2)(b) yelling out her father’s phone number during this time, nor did he recall himself or PO Hamilton saying anything in response. PO Ibasan did not recall saying “You can call him yourself down at the fucking precinct”, nor did he recall any other officer making that statement. During his interview PO Ibasan was shown a portion of his BWC footage located in IA # 86 of the digital case file, beginning at 06:05. The footage captures an officer saying, “You can call him yourself down at the fucking Precinct.” PO Ibasan acknowledged hearing the statement being made but denied that it was him. PO Ibasan could not identify the voice of the officer that made the statement.

NYPD Patrol Guide Procedure 203-09 requires officers to be courteous and respectful (Board Review 19).

DAO DCT Case Number 2015-15012 states that while officers are permitted to use profanity during stressful street encounters, they are not permitted to use profanity in situations in which the profanity serves to belittle the civilian (Board Review 22).

PO Ibasan’s BWC footage captures an officer saying to § 87(2)(b) “You can call him yourself down at the fucking Precinct.” All the officers interviewed denied making the above statement. However, based on the BWC footage, which captures PO Hamilton and PO Ibasan escorting § 87(2)(b) to the vehicle, the proximity of the voice in relation to PO Ibasan and PO Damico’s camera, and PO Hamilton’s acknowledgement that he and PO Ibasan escorted § 87(2)(b) to the vehicle, the investigation determined that PO Hamilton made the above statement despite him denying doing

SO. § 87(2)(g)

There is no BWC footage of § 87(2)(b) transport to the 73rd Precinct stationhouse. None of the officers interviewed recalled who transported § 87(2)(b) to the stationhouse. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties (Board Review 23, 24).
- PO Damico has been a member of service for seven years and has been a subject in five CCRB complaints and 12 allegations, of which four were substantiated.
 - 201903126 involved a substantiated allegation of a threat of force against PO Damico. The Board recommended Command Discipline A and the NYPD did not impose any disciplinary action.
 - 202006217 involved substantiated allegations of physical force, a threat of force, and a discourteous word against PO Damico. The Board recommended charges for all substantiated allegations and the NYPD has not yet imposed discipline.
 - § 87(2)(g)
- PO Hamilton has been a member of service for eight years and has been a subject in one CCRB complaint and three allegations, none of which were substantiated. § 87(2)(g)
- PO Fowler has been a member of service for two years and has been a subject in four CCRB complaints and 10 allegations, all of which are currently being investigated.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation due to an arrest.
- On April 12, 2022, a Notice of Claim inquiry was submitted electronically to the New York City Office of the Comptroller. The results will be added to the case file upon receipt (Board Review 25)

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 3

Investigator: Charis Jones Inv. Charis Jones 04/19/2022
Signature Print Title & Name Date

Squad Leader Olga Golub IM Olga Golub 04/19/2022
Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____